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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,673	03/08/2001	Craig Howard Doan	011525-273	4837

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
1761	8

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/800,673

Applicant(s)

DOAN ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The amendment filed January 29, 2003 has been entered. Claims 8-15 have been added. Claims 1-15 are pending in the application.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. Claims 1-7, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamann et al (US 4761294) in view of Desai et al. (US5589213), Bonnett et al. (US 4900576), and Manvell (US 4927653).
4. Regarding claims 1- 7, 11, 13, 14, Hamann et al. teach a method of preparing French fried potato comprising the steps of obtaining frozen par-fried potato pieces and surface pasteurizing the potato pieces at 300°f and 450°F, in a pasteurizing apparatus, which is an impingement oven, as recited in claim 2, that raises the surface temperature and removes excess moisture (Column 2, line 29-60, Column 4, line 63 to Column 5, line 18). Hamann et al. teach the surface-pasteurized potatoes are frozen and then stored under freezing conditions to inhibit bacterial growth during storage (Column 7, lines 9-29, Figure 1). However, Hamann et al. are silent in teaching the pasteurizing apparatus has an exit into a clean room environment and storing the frozen par-fried potatoes, as recited in claims 1 and 3-7, before pasteurizing, as recited

Art Unit: 1761

in claim 11, or shipping the frozen pieces to another location for pasteurizing as recited in claim 13.

5. With respect to storing the frozen par-fried potato pieces, Desai et al. are relied on as evidence of the conventionality of storing frozen parfried potato pieces and obtaining frozen parfried potato pieces for further treatment/packaging. Desai et al. teach this method assists in reducing operating costs by utilizing two process locations for preparing packaged fried potato pieces. One large central location completes the more expensive processes, such as receiving/treating raw potatoes and freezing/storing the parfried potato pieces, while satellite locations are utilized for obtaining the frozen parfried potato pieces and completing the less expensive final heat treatment and packaging steps, as recited in claims 1,11,13 (Column 1, lines 5-19, Column 4, lines 16-67).

6. Bonnet et al. are relied on as further evidence of the conventionality of obtaining and storing frozen parfried potato pieces. Bonnet et al. teach storing between two parfried steps that have a heating step between them, similar to the method of Hamann et al. (Column 3, line 45 to Column 4, line 15).

7. With respect to packaging in a clean room after the pasteurizing step, Manvell, who also teaches a method of preparing French fried potato pieces for extended storage without microbial contamination, recognizes it is well known to freeze fried potato pieces to prevent microbial growth during storage, but offers an alternative that provides a longer shelf life of the completed product without freezing (Column 1, lines 9-25, Column 2, lines 25-44, Column 3, lines 40-65). Manvell is relied on as evidence of

Art Unit: 1761

the conventionality of providing an exit from a sterilizing, or pasteurizing apparatus (i.e. raises the temperature and removes moisture like Hamann et al.), into a clean room, or aseptic environment as recited in claim 4, having a modified atmosphere as recited in claim 5(i.e. sterile gas in Column 4, lines 65-68), wherein the pasteurized fried potato pieces are cooled, as recited in claim 3, packaged to obtain an extended shelf life prior to preparing for consumption for several weeks or months, which would include 60 days as recited in claim 6, wherein the product has a reduced reconstitution time, as recited in claim 14(Column 2, lines 10-15, Column 4, line 45 to Column 5, line 34, Column 6, lines 9-42,58-67). Manvell teaches that by using aseptic packaging in a clean room after pasteurizing, the overall cost of the operation is further reduced since the distribution sites would not require freezers and the flavor is improved (Column 4, lines 1-30). Manvell further teaches packaging under aseptic condition will assure that all harmful and spoilage organisms are killed, as recited in claim 7, and by aseptically packaging in a modified atmosphere the pasteurized or sterilized condition (i.e. which is reached at a temperature of at least 230°F to kill all harmful and spoilage organisms) is maintained during the shelf life (Column 2, lines 25-66).

8. Therefore, it would have been obvious to modify Hamann et al. and include storing the frozen par-fried potato pieces prior to pasteurizing and ship the pieces from one central location to another, as recited in claims 1, 11, and 13, since Desai et al. teach this would reduce operating costs for a company *prior to* the final heat treatment/packaging step. It would have been further obvious to modify the method of Hamann et al. such that the pasteurization apparatus would have an exit into an

Art Unit: 1761

aseptic environment for aseptic packaging, as recited in claim 4, with a modified atmosphere as recited in claim 5, that would extend the shelf life to 60 days as recited in claim 6, cooling the surface pasteurized fried potatoes, as recited in claim 3, with a reduced reconstitution time as recited in claim 14 since the aseptic packaging/storages method of Manvell further saves money for the steps involved *after* the final heat treatment/packaging steps, provides a longer shelf life, and does not require to be thawed prior to preparation. One would have been substituting one known method of packaging/storing fried potato pieces for another for the same purpose: storage of par-fried potato pieces until a finish-cooking step. Additionally, it would have been further obvious that the final microbial counts would be less than 1.0 log CFU/g for mold, for example, and negative for *Listeria monocytogenes*, *Salmonella*, *Clostridium botulinum*, *E. coli* 0157:H7, and *Staph. Aureus* since Manvell teaches packaging under aseptic condition will assure that *all* harmful and spoilage organisms are killed, as long as the product being packaged is first heated to 230°F, which is a *lethal* temperature for microbial growth, and Hamann et al. pasteurize the pieces to temperatures of 300-450°F. One would have been substituting one method of packaging (i.e. aseptic packaging) for another for the same purpose: storage of a pasteurized fried potato piece.

9. Regarding claim 12, Hamann et al. is silent in teaching less than 24°F for obtaining frozen pieces. However, Desai et al. teaches the first freezing step (i.e. obtaining frozen parfried pieces) should be anywhere from 14 to -22°F (Column 8, lines 35-45). Bonnett et al. is relied on as further evidence of providing a first freezing step at

Art Unit: 1761

0°F (Claim 3, line 67 to Claim 4, line 2). Therefore, it would have been obvious to select a temperature of less than 24°F since this was a conventional temperature for a frozen parfried potato piece in the "obtaining" step.

10. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamann et al (US 4761294) in view of Desai et al. (US5589213), Bonnett et al. (US 4900576), and Manvell (US 4927653), as applied to claims 1-7, 11-14 above, further in view of Hullah (US 4579743).

11. Regarding claims 8 –10, Hamann et al. is silent in teaching the particular gas composition, Hullah is relied on as evidence that a preferred modified atmosphere package for cooled parfried potato pieces for 3-8 weeks comprises 10-35% Carbon dioxide, no more than 1.0% Oxygen, and 65-90% Nitrogen or another inert gas. This particular gas composition prevents microbial growth (Abstract, Column 5, line 49 to Column 6, line 10). Therefore, it would have been obvious to further include a modified atmosphere package with 10-15% Carbon dioxide, 0% to 1.0% Oxygen, and 0% or 65-80% Nitrogen, since one would have been substituting one modified atmosphere composition for another for the same purpose: storing parfried potato pieces.

Bonnett et al. teach obtaining and storing frozen parfried potato pieces, which is followed by a parfrying step, which would serve as a surface pasteurizing (Column 3, line 45 to Column 4, line 15). However Bonnett et al. are silent in teaching the surface pasteurizing apparatus has an exit into a clean room environment.


**Conclusion**


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Minelli et al. (US 6514554 B 1) teaches obtaining and storing frozen parfried potatoes. Ruggerone (US 3773527 and Hibbs et al. (US 5204133) teach extending the shelf life of potato products with an atmosphere that includes an inert gas, such as nitrogen, and carbon dioxide.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen   
Examiner  
Art Unit 1761  
April 3, 2003

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
for M. Cano